

NOTICE OF PUBLIC HEARING

RACE-BASED NICKNAMES, LOGOS, MASCOTS AND TEAM NAMES

NOTICE IS HEREBY GIVEN That pursuant to ss. 118.34 (2) (a), (b) 1. and 2. and (4) and 227.11 (2) (a), Stats., and interpreting s. 118.134, Stats., the Department of Public Instruction will hold a public hearing as follows to consider emergency and proposed permanent rules creating Chapter PI 45, relating to race-based nicknames, logos, mascots, and team names.

The hearing will be held as follows:

DATE AND TIME

July 29, 2010
10:30 am – 12:30 pm

LOCATION

Madison
GEF 3 Building
125 South Webster St.
Room 041

The hearing site is fully accessible to people with disabilities. If you require reasonable accommodation to access any meeting, please call Jennifer Kammerud, Legislative Liaison, at (608) 266-7073 or jennifer.kammerud@dpi.wi.gov or leave a message with the Teletypewriter (TTY) at (608) 267-2427 at least 10 days prior to the hearing date. Reasonable accommodation includes materials prepared in an alternative format, as provided under the Americans with Disabilities Act.

Copies of Rule and Contact Person

The administrative rule and fiscal note are available on the internet at <http://dpi.wi.gov/pb/rulespg.html>. A copy of the proposed rule and the fiscal estimate also may be obtained by sending an email request to lori.slauson@dpi.wi.gov or by writing to:

Lori Slauson, Administrative Rules and Federal Grants Coordinator
Department of Public Instruction
125 South Webster Street
P.O. Box 7841
Madison, WI 53707

Written comments on the proposed rules received by Ms. Slauson at the above mail or email address no later than August 4, 2010, will be given the same consideration as testimony presented at the hearing.

Analysis by the Department of Public Instruction

Statute interpreted: s. 118.134, Stats.

Statutory authority: s. 118.34 (2) (a), (b) 1. and 2 and (4), Stats.

Explanation of agency authority:

2009 Wisconsin Act 250 allows a school district resident to object to the use of a race-based nickname, logo, mascot, or team name by the school board of that school district by filing a complaint with the state

superintendent.

Under s. 118.34 (4), the state superintendent is required to promulgate rules necessary to implement and administer this provision.

Specifically under s. 118.34 (2) (a) and (b) 1. and 2., Stats., rules must define whether the use of the race-based nickname, logo, mascot, or team name promotes discrimination, pupil harassment, or stereotyping.

Related statute or rule: Chapter PI 9, pupil discrimination.

Plain language analysis:

2009 Wisconsin Act 250 allows a school district resident to object to the use of a race-based nickname, logo, mascot, or team name by the school board of that school district by filing a complaint with the state superintendent. If a complaint objects to the use of a nickname or team name by a school board, the state superintendent must immediately review the complaint and determine whether the use of the nickname or team name by the school board, alone or in connection with a logo or mascot, is ambiguous as to whether it is race-based.

If the state superintendent determines that the use of the nickname, logo, mascot or team name is unambiguously race-based, the school board has the burden of proving by clear and convincing evidence that the use of the race-based nickname, logo, mascot or team name does not promote discrimination, pupil harassment, or stereotyping as defined by the state superintendent by rule.

If the state superintendent determines that the use of the nickname or team name by a school board is ambiguous as to whether it is race-based but that the use of the nickname or team name in connection with a logo or mascot is race-based, at the hearing the school board has the burden of providing by clear and convincing evidence that the use of the nickname or team name in connection with the logo or mascot does not promote discrimination, pupil harassment, or stereotyping, as defined by the state superintendent by rule.

If the state superintendent determines that the use of the nickname or team name by a school board is ambiguous as to whether it is race-based, the use of the nickname or team name by the school board is presumed to be not race-based and at the hearing the school district resident who filed the complaint has the burden of proving by clear and convincing evidence that the use of the nickname or team name promotes discrimination, pupil harassment, or stereotyping, as defined by the state superintendent by rule.

If the school board receives approval from a specific, federally recognized American Indian tribe to use the nickname, logo, mascot or team name, the state superintendent may determine that no contested case hearing is necessary or that a hearing date may be postponed for the purpose of obtaining additional information.

Under the Act, the state superintendent is required to promulgate rules to define whether the use of the nickname, logo, mascot, or team name promotes discrimination, pupil harassment, or stereotyping and other rules necessary to implement and administer this provision.

The rules specify that the use of any of the following nicknames or team names are unambiguously race-based and presumed to promote discrimination, pupil harassment or stereotyping unless the school district produces clear and convincing evidence refuting this presumption.

- A nickname or team name is unambiguously race-based if it includes any of the following terms: 1. the full or partial name of any specific, federally recognized American Indian tribe, 2. Indians, 3. Braves, or 4. Redmen.

- A nickname or team name is unambiguously race-based if it includes any of the terms arrows, blackhawks, chiefs, chieftains, hatchets, raiders, red raiders, warriors, or warhawks and is used in connection with any of the following logos or mascots: 1. A depiction of an American Indian person or persons, 2. Feathers or feather headdress, 3. Arrows, bows, spears, tomahawks, stone hatchets, or other historical or traditional American Indian weapons or tools, or 4. Historical or traditional American Indian drums, pipes, beadwork, clothing or footwear.

The rules establish procedural timelines as to when and what information must be submitted to the state superintendent by a school board and when a contested case hearing may or may not be scheduled.

Proposed permanent rules were submitted to the legislative council on June 16, 2010 and were promulgated as emergency rules effective June 1, 2010.

Summary of, and comparison with, existing or proposed federal regulations: N/A.

Comparison with rules in adjacent states:

Illinois, Iowa, Michigan, and Minnesota do not have administrative rules relating to Indian nicknames, logos, mascots, and team names.

Summary of factual data and analytical methodologies:

Current law, s. 118.13, Stats., prohibits discrimination against pupils on a number of grounds, including race and ancestry. Complaints relating to race-based names, logos, mascots and team names have been filed under this statute in the past. Under s. 118.13, Stats., the burden of proof is on the complainant to prove by a preponderance of the evidence that use of a nickname, logo, mascot, or team name results in pupil discrimination. In addition, the complaint first must be filed with the school board and then appealed to the department. 2009 Wisconsin Act 250 provides that a school district resident may object to a school board's use of a race-based name, nickname, logo, mascot, or team name by filing a complaint directly with the state superintendent of public instruction. This Act creates a presumption that use of a race-based nickname, logo, mascot, or team name promotes discrimination and requires school boards to provide clear and convincing evidence to refute that presumption.

2009 Wisconsin Act 250 is supported by the 11 tribal governments in Wisconsin, the Great Lakes Inter-Tribal Council, the Wisconsin Indian Education Association, the Wisconsin Education Association Council, other Indian nations and organizations across the country, various national non-profit and faith-based organizations, and most recently the National Collegiate Athletic Association (NCAA).

Analysis and supporting documents used to determine effect on small business or in preparation of economic impact report: N/A.

Anticipated costs incurred by private sector: N/A.

Effect on small business:

The proposed rules will have no significant economic impact on small businesses, as defined in s. 227.114 (1) (a), Stats.

Agency contact person: (including email and telephone)

Carolyn Stanford Taylor, Division Administrator, Division for Learning Support: Equity and Advocacy, carolyn.stanfordtaylor@dpi.wi.gov, or (608) 266-1649.

Fiscal Estimate

2009 Wisconsin Act 250 would allow a resident to object to the school district's use of a race-based name, nickname, logo, or mascot by filing a complaint with the state superintendent. If discrimination is found, the school district will be ordered to terminate use of the name, nickname, logo, or mascot within 12 months unless an extenuating circumstance exists. Failure to terminate use could result in the district being subject to a \$100-\$1,000 forfeiture per day.

Local: There are approximately 40 schools in the state that currently use American Indian names, nicknames, logos, or mascots. If required to terminate the use of the ethnic name, nickname, logo, or mascot, costs to a school district would be related to the replacement of existing supplies, team uniforms, and associated inventory that currently bear the name, nickname, logo, or mascot, and would vary from district to district. It is unknown how many, if any, residents of districts will file complaints and how many hearings will result in termination of the name, nickname, logo, or mascot. Thus, local costs are indeterminate.

It is also not known how many, if any, districts will not terminate use of their name, nickname, logo, or mascot if ordered to do so. These districts would be subject to a forfeiture of \$100-\$1,000 per day. It is not known how many days that districts would remain out of compliance or the exact amount they would be ordered to pay. Therefore, the fiscal effect of these provisions are also not able to be determined.

State: Costs to DPI will be related to the number of complaints that are brought to the state superintendent. Because it is not known how many, if any, complaints will be made, the costs are indeterminate.

The proposed rules will have no significant economic impact on small businesses, as defined in s. 227.114 (1) (a), Stats.

Initial Regulatory Flexibility Analysis

The proposed rules are not anticipated to have a fiscal effect on small businesses as defined under s. 227.114 (1) (a), Stats.

State Superintendent or Designee

Date